No. 49324-1-II

COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION II

CHARLES and CAROL PARSONS,

Respondents,

v.

JOHN PAUL MIERZ,

Appellant.

BRIEF OF APPELLANT

Mark Morzol, WSBA No. 43457
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Pro Bono Attorneys for Appellant

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I. INTRODUCTION

The Forcible Entry and Forcible and Unlawful Detainer Act ("UDA"), 59.12 RCW, sets forth a summary procedure for evicting both residential and commercial tenants. The Residential Landlord-Tenant Act ("RLTA"), 59.18 RCW, and the Manufactured/Mobile Home Landlord-Tenant Act ("MHLTA"), 59.20 RCW, provide additional substantive and procedural protections that supplement the UDA for residential and mobile home park tenants, respectively. However, to apply the RLTA or MHLTA, the parties to the tenancy must be covered under the definitions provided in each statutory chapter. If the parties to the tenancy do not meet the definitions in the RLTA or MHLTA, then only the procedural mechanisms of the UDA govern the eviction.

In this case, Mierz resided in a recreational vehicle at Harts Lake Resort, owned and operated by the Parsons, under a verbal, month-to-month tenancy. Mierz is the owner of his recreational vehicle, and he was merely renting the lot space upon which his vehicle was parked.

Following the receipt of a twenty-day notice to terminate tenancy, Mierz challenged the eviction notice arguing that his recreational vehicle was permanently or semi-permanently installed on Space 9, and therefore Harts Lake was a mobile home park as defined in the MHLTA. After hearing evidence, the trial court found that Harts Lake was not a mobile

home park as defined in the MHLTA. The court then found the RLTA applied to Mierz' tenancy and awarded attorney fees to Harts Lake.

Mierz accepts the trial court's findings of fact and conclusions of law that the MHLTA does not apply. Mierz is only appealing the application of the RLTA to Mierz' tenancy as the basis for awarding attorney fees. Mierz respectfully asks this court to reverse the trial court's award of attorney fees and remand for entry of an amended judgment consistent with the reversal.

II. ASSIGNMENT OF ERROR

Mierz assigns error to the portions of the Judgment awarding Harts Lake attorney fees. CP 22-24. Mierz also assigns error to the trial court's Findings of Fact and Conclusion of Law, specifically Conclusions of Law 4, 7, and 11. CP 20-21.

III. ISSUE PERTAINING TO ASSIGNMENT OF ERROR

Did the trial court err in awarding attorney fees under the Residential-Landlord Tenant Act. 59.18 RCW, when Mierz' tenancy consisted solely of lot space rental for his recreational vehicle?

IV. STATEMENT OF THE CASE

John Paul Mierz (hereinafter, "Mierz") resided on Space 9 of Harts Lake Resort, owned by Charles and Carol Parsons (collectively hereinafter, "Harts Lake"), under an oral agreement to pay monthly rent. CP 17. Mierz paid $365 monthly for rent and paid for utilities based on his metered usage. CP 18. On April 2, 2016, Harts Lake served Mierz with a twenty-day notice terminating his tenancy effective April 30, 2016. CP 20. Mierz failed to timely vacate Space 9 and Harts Lake commenced unlawful detainer proceedings. CP 20.

At the unlawful detainer show cause hearing, Mierz argued Harts Lake was a mobile home park subject to the Manufactured/Mobile Home Landlord-Tenant Act, thereby making a twenty-day notice to terminate tenancy improper. Exhibit A. The commissioner presiding over the hearing denied issuing Harts Lake an immediate writ of restitution and set the matter for trial. Exhibit B.

After hearing evidence and testimony at trial, the trial court declined to apply the Manufactured/Mobile Home Landlord-Tenant Act, finding there was "nothing permanent" about the way Mierz' recreational vehicle was placed on Space 9. CP 19. The trial court found Mierz' utility hook-ups included a power cord for electricity, a water spigot for a water

connection, and a drop-in flex hose to dispose of sewage. CP 19. The trial court also found Mierz recreational vehicle was parked on Space 9 by using jacks that were part of the vehicle and lowered to prevent damage to the tires from long-term parking. CP 18. The trial court found Mierz' recreational vehicle was "mobile" and could "be removed at any time" from Space 9. CP 18-19. In sum, Mierz' recreational vehicle was never affixed to Space 9 in any meaningful way. From these facts, the trial court concluded Harts Lake was "an RV park" and Mierz' eviction was subject to the Residential Landlord-Tenant Act. CP 20.

After the trial court ruled in favor of Harts Lake and issued a writ of restitution returning possession of Space 9 to Harts Lake, Mierz challenged the attorney fees award. RP 2. The trial court set the matter of attorney fees over for additional argument. RP 2. At this supplemental hearing, Harts Lake asked for an award of attorney fees based solely on the Residential Landlord-Tenant Act. CP 2-3. Mierz argued the Forcible Entry and Forcible and Unlawful Detainer Act applied, not the Residential Landlord-Tenant Act, thereby precluding an award of attorney fees. CP 8-12. The trial court held the Residential Landlord-Tenant Act applied, stating that Mierz recreational vehicle was a "structure" and Space 9 was "being used to house this motor home." RP 9-10. After reducing attorney fees for unsuccessful claims, the trial court entered an award of attorney

fees for $7,500 to Harts Lake. CP 22-23: RP 12. Mierz then filed this appeal regarding the award of attorney fees.

V. ARGUMENT

THE TRIAL COURT ERRED IN AWARDING ATTORNEY FEES UNDER THE RESIDENTIAL-LANDLORD TENANT ACT, 59.18 RCW, WHEN THE TENANCY CONSISTED SOLEY OF LOT SPACE RENTAL FOR A RECREATIONAL VEHICLE.

A. The Residential Landlord-Tenant Act does not Apply to Mierz' Tenancy Because Mierz did not Rent a Dwelling Unit as Defined by RCW 59.18.030.

Whether a statute authorizes an award of attorney fees is a question of law that is reviewed de novo. *Niccum v. Enquist*, 175 Wn.2d 441, 446, 286 P.3d 966 (2012).

Two sets of statutes are involved in this case, the Forcible Entry and Forcible and Unlawful Detainer Act (UDA), which broadly applies to all tenancies for real property, and the Residential Landlord-Tenant Act (RLTA), which modifies the procedural mechanisms of the UDA and establishes the duties of residential landlords and tenants. RCW 59.12.030; RCW 59.18.060; RCW 59.18.130.

The UDA provides an expedited method for resolving the right to possession and to hasten the recovery of real property. *FPA Crescent Assocs v. Jamie's, LLC*, 190 Wn.App. 666, 674, 360 P.3d 934 (2015).

The unlawful detainer statutes relieve a landlord of the expense and delay of filing a common law action for ejectment. *Id.* at 675. The UDA defines the conditions that can place a tenant in unlawful detainer. RCW 59.12.030. Any "tenant of real property for a term less than life" can be found in unlawful detainer under the UDA. *Id.*

The UDA's statute governing judgments permits the court, upon finding a tenant to be in unlawful detainer, to enter a writ of restitution, declare forfeiture of the lease, and award double damages for rent owed. RCW 59.12.170. The UDA contains no provision for the award of attorney fees. *Fannie Mae v. Steinmann*, 181 Wn.2d 753, 755, 336 P.3d 614 (2014); *see also* RCW 59.18.410.

In contrast to the UDA, the RLTA applies only to "landlord-tenant relationships." RCW 59.18.911. Under the RLTA, a "tenant" is defined as "any person entitled to occupy a dwelling unit . . . under a rental agreement." RCW 59.18.030(27).[1] A "dwelling unit" is defined as "a structure or that part of a structure, which is used as a home, residence, or sleeping place." RCW 59.18.030(9).

In turn, a "landlord" is defined as "the owner, lessor, or sublessor of the dwelling unit or the property of which it is a part." RCW

[1] "Rental Agreement" is "all agreements which establish or modify the terms, conditions, rules, regulations, or any other provisions concerning the use and occupancy of a *dwelling unit*." RCW 59 18.030(25) (emphasis added).

59.18.030(14). The term "property" is defined as "*all dwelling units* on a contiguous quantity of land managed by the same landlord as a single, rental complex." RCW 59.18.030(19) (emphasis added). Read together, a landlord is the owner, lessor, or sublessor of either the individual dwelling unit or all the dwelling units on the contiguous piece of land. RCW 59.18.030(14). (19).

Although the statutory definitions require importing one definition into another to logically assemble, under the facts of this case, Mierz was not a "tenant" as defined in the RLTA. To be considered a tenant for application of the RLTA, an individual must be entitled to occupy a dwelling unit—a structure or part of a structure—as a residence under a rental agreement. RCW 59.18.030(27). But Mierz was not entitled to occupy his recreational vehicle by virtue of a rental agreement. Mierz can occupy his recreational vehicle wherever and whenever he chooses because he owns it. The only thing the rental agreement between Mierz and Harts Lake entitled Mierz to occupy was Space 9. And Space 9 at Harts Lake cannot plausibly be construed as a "dwelling unit" because it is not "a structure or part of a structure" under any common usage of the term. *Structure*, Black's Law Dictionary (10th ed. 2014) (defining "structure" as "any construction, production, or piece of work artificially

built up or composed of parts purposefully joined together"). Space 9 is simply an arbitrarily designated portion of real property.

Nor is Harts Lake a "landlord" as defined in the RLTA. To be a "landlord," Harts Lake must have ownership of the dwelling unit or have possessory interest in the dwelling unit superior to the tenant. RCW 59.18.030(14) (defining "landlord" as "the owner, lessor, or sublessor of the dwelling unit"). Yet, while Harts Lake certainly owns the land designated as Space 9. Harts Lake has no possessory interest in Mierz' recreational vehicle. Neither is Mierz' recreational vehicle "a part" of any property—dwelling unit or otherwise—owned by Harts Lake. RCW 59.18.030 (landlord must own, lease, or sublease the dwelling unit "or the property *of which it is a part*") (emphasis added). The trial court's findings clearly show Mierz' recreational vehicle had no substantial attachment to the property at Harts Lake. *See* Findings of Fact and Conclusions of Law at CP 18-19 (finding Mierz' recreational vehicle "can be removed at any time" and there was "nothing permanent" about its installation at Harts Lake).[2]

[2] Indeed, Mierz' only proffered defense to this eviction was that his recreational vehicle was installed in a permanent or semi-permanent manner, thereby providing him with the protections of the Manufactured/Mobile Home Landlord-Tenant Act ("MHLTA"). RCW 59.20. The trial court rejected this defense because Mierz could not show his recreational vehicle was in fact a permanent or semi-permanent structure on the land. *See* Findings of Fact and Conclusions of Law, CP 19.

On the facts in this case, Mierz was not a tenant, Harts Lake was not a landlord, and the contract between the parties was not a rental agreement for the purposes of the RLTA. The RLTA does not apply to Mierz' tenancy. Correspondingly, the award of attorney fees pursuant to the RLTA was error.

B. Interpreting Mierz' Space Rental as Rental of a Dwelling Unit Makes No Sense in the Context of the RLTA as a Whole.

Beyond the statutory definitions, related statutes in the RLTA confirm the implausibility of construing a space rental for a recreational vehicle as a "dwelling unit." *Meadow Park Garden Assoc., v. Vanley*, 54 Wn.App. 371, 375, 773 P.2d 875 (1989) (when interpreting statutes, "a court should harmonize and give effect to all statutory provisions applying to a particular subject"). Under the RLTA, landlords have duties to safeguard the master key to the dwelling unit; to maintain the dwelling unit in weathertight condition; provide written notice to the tenant that the dwelling unit is equipped with a smoke protection device; and to provide tenants with information on controlling mold in the tenant's dwelling unit. RCW 59.18.060(7), (9), (12)(a). Landlords are prohibited from taking retaliatory actions against tenants who provide consent to code enforcement "to inspect his or her dwelling unit to determine the presence

of an unsafe building condition." RCW 59.18.150(4)(b). Landlords must provide forty-eight hour notice to enter the dwelling unit and cannot excessively exhibit the dwelling unit to potential purchasers. RCW 59.18.150(6). The victim's protection provisions of the RLTA allow tenants victimized by a landlord to change the locks on his or her dwelling unit, but upon vacating the dwelling unit, the tenant must deliver the key back to the landlord. RCW 59.18.575(4)(f). These statutes would be rendered puzzlingly incoherent by construing "dwelling unit" to include a space rental for a recreational vehicle.

The only straightforward conclusion of applying the definitions of "landlord," "tenant," and "dwelling unit" located in the RLTA is that the RLTA applies when a tenant is renting his or her dwelling unit from another, not when a tenant is parking a recreational vehicle on another's land. This proposition is plainly trumpeted within the MHLTA's statute regarding the applicability of chapters 59.12 RCW—the UDA—and 59.18 RCW—the RLTA:

> This chapter shall regulate and determine legal rights, remedies, and obligations arising from any rental agreement between a landlord and a tenant regarding a mobile home lot and including specified amenities within the mobile home park . . . where the tenant has no ownership interest in the property or in the association that owns the property. . . . *Rentals of mobile homes, manufactured homes, or park models themselves are*

> *governed by the residential landlord-tenant act, chapter 59.18 RCW.*

RCW 59.20.040 (emphasis added). While the trial court held the MHLTA's protections do not apply to Mierz, RCW 59.20.040's mandate on the applicability of the RLTA is highly instructive.

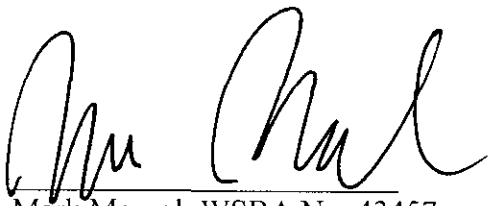
In sum, Mierz resided in his own recreational vehicle while renting Space 9 at Harts Lake on a verbal, month-to-month tenancy. While this was clearly a tenancy, this is simply not a type of tenancy covered by the RLTA. Mierz' tenancy at Harts Lake does not fall under the RLTA because he was not renting a dwelling unit that was part of the property. Instead, Mierz was renting real property from Harts Lake—namely, Space 9—for a term less than life. Therefore, the UDA is the statutory scheme that applies. And the UDA contains no provision for the award of attorney fees. RCW 59.12.170; *Fannie Mae v. Steinmann*, 181 Wn.2d 753, 755, 336 P.3d 614 (2014) (attorney fees under RLTA improper without underlying landlord-tenant relationship).

VI. CONCLUSION

The trial court erred by awarding attorney fees to Harts Lake under the RLTA. Mierz respectfully asks this court to reverse the award of attorney

fees and remand for entry of an amended judgment consistent with the reversal.

Respectfully submitted this 21st day of February, 2017.



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VII. APPENDIX

1. EXHIBIT A – Defendant's Answer to Complaint for Unlawful Detainer

2. EXHIBIT B – Stipulated Motion and Order to Vacate Order for Writ of Restitution

3. EXHIBIT C – Statutory text of RCW 59.20.030; RCW 59.12.170; RCW 59.18.030; and RCW 59.18.410.

EXHIBIT A

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE

CHARLES PARSONS and CAROL PARSONS, husband and wife, Plaintiffs, vs. JOHN PAUL MIERZ, and all other occupants at 40014 Templin Road, Space 9, Roy, WA, 98580, Defendants.	No. 16-2-07585-7 DEFENDANT'S ANSWER TO COMPLAINT FOR UNLAWFUL DETAINER

COMES NOW the Defendant, John Paul Mierz, by and through his attorney Kent van Alstyne, and respectfully requests the Court dismiss the unlawful detainer with prejudice, and award defendant reasonable attorney's fees. Defendant admits the statements contained in section I of the complaint, and denies the statements contained in sections II–V.

A. Facts

The Plaintiffs are the owners of the mobile home park, Heart Lake Resort, located at 40014 Templin Road, Roy, Piercy County, Washington 98580. Defendant leases Space 9 in Heart Lake

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Resort, but owns the RV and separate structure on the premises. On or about September 1st, 2012, Defendant signed a year-long lease for Space 9. No subsequent lease or any other written agreement regarding Space 9 has been executed. Defendant's primary residence is an RV on Space 9, which has been hard lined through concrete into the utilities in the park. Defendant has also built, with the owner's knowledge and permission, a large separate tent structure. This tent structure sits on a thick concrete slab—thick enough for Defendant to drive his vehicles onto it for maintenance—that Defendant constructed, and has railroad ties with vinyl coverings that serve as walls. This structure serves both as a storage area, but also a shop area where Defendant can work on vehicles.

Defendant's home is one of many long-term residences in the park—many have been in the park for over ten years. The septic tank for the park does not have enough volume for the number of permanent residents who live at the park. When the septic tank is pumped, the sewage flows out into a septic drain field, which flows downhill directly across Space 9. Due to the size of the septic tank relative to the number of residents, this pumping occurs frequently. On March 29th, 2016, Defendant asked Plaintiffs to fix the issue with the septic tank and the septic flow that consistently drains across Space 9. On April 1st, 2016, Plaintiff denied Defendant's tender of rent for the month of April. On April 2, 2016, Plaintiffs served Defendant with a 20-day notice to terminate tenancy.

B. Analysis

Plaintiff's complaint improperly applies the Residential Landlord-Tenant Act (RCWA)[1] to Defendant's tenancy. Defendant's tenancy is controlled by the Manufactured/Mobile Home Landlord-

[1] RCW 59.18 *et seq.*

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Tenant Act (MHLTA).[2] Plaintiff may only terminate Defendant's tenancy through one of the grounds specified in 59.20.080.[3] Nothing in 59.20.080 provides for a 20-day notice of termination of tenancy. Plaintiff's grounds for termination and required statutory notice in this case are both therefore defective, and the case should be dismissed with prejudice. Plaintiff's attempted eviction is also a prohibited retaliatory action under 59.20.070(5),[4] requiring dismissal. The MHLTA mandates an award of attorney's fees to the prevailing party in any action under the chapter. RCW 59.20.110.

1. The Mobile Home Landlord Tenant Act Controls this Case

The applicability of the MHLTA is governed by RCW 59.20.040. The MHLTA applies to rental agreements between a landlord and tenant regarding a "mobile home lot" within a "mobile home park." *See* RCW 59.20.040. The RLTA, in contrast, applies to "[r]entals of mobile homes, manufactured homes, or park models themselves." *Id.* Defendant owns the RV and separate tent structure—his rental agreement is purely for the mobile home lot. Heart Lake Resort is a "mobile home park," as defined by the MHLTA, because it is real property with two or more spaces rented for the placement of mobile homes, manufactured homes, or park models, and Heart Lake Resort is a year-round mobile home park intended for year-round occupancy. *See* RCW 59.20.030(10).[5] Defendant's Space 9 is a "mobile home lot" for the purposes of the MHLTA because it is designated for the location of one "park model and its accessory buildings, and intended for the exclusive use as a primary residence by the occupants of

[2] RCW 59.20 *et seq.* As a result, Defendant is currently on a year-long lease pursuant to RCW and 59.20.090(1) and 59.20.050(1).

[3] "A landlord shall not terminate or fail to renew a tenancy of a tenant or the occupancy of an occupant, of whatever duration except for one or more of the following reasons..." RCW 59.20.080(1).

[4] "A landlord shall not...(5) Evict a tenant...in retaliation for any of the following actions...(b) Requesting the landlord to comply with the provision of this chapter or other applicable statute." RCW 59.20.070(5)(b).

[5] "Mobile home park...means any real property which is rented or held out for rent to others for the placement of two or more mobile homes, manufactured homes, or park models for the primary purpose of production of income, except where such real property is rented or held out for rent for seasonal recreational purpose only and is not intended for year-round occupancy." RCW 59.20.030(10).

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that...park model." RCW 59.20.030(9). Defendant's RV, in turn, is a park model for purposes of the MHLTA because it is a "recreational vehicle intended for permanent or semi-permanent installation and is used as a primary residence." RCW 59.20.030(14). Lastly, as RCW 59.20.080(3) makes clear, the MHLTA—not the Unlawful Detainer Act[6] or the RLTA—"governs the eviction of park models, and recreational vehicles used as a primary residence," from mobile home parks. RCW 59.20.080(3). As a result, the MHLTA applies to the rental agreement and this eviction action between Plaintiff and Defendant.

2. Plaintiff's 20-Day Notice to Terminate Tenancy is Improper

The MHLTA clearly delineates an *exclusive* list of grounds for termination of any tenancy. RCW 59.20.080 ("A landlord shall not terminate or fail to renew a tenancy of a tenant...of whatever duration except for one or more of the following reasons"). Plaintiff's 20-day notice to terminate tenancy is not proper notice to terminate any MHLTA tenancy. Plaintiff has failed both to allege proper grounds for termination, and to deliver the required statutory notice under the MHLTA. The action must be dismissed with prejudice.

3. Plaintiff's Eviction Notice was Retaliatory

The MHLTA prohibits certain actions by landlords under RCW 59.20.070. One of the prohibited actions is "[e]vict[ing] a tenant...in retaliation for...(b) Requesting the landlord to comply with the provision of this chapter." RCW 59.20.070(5)(b). Evictions initiated within one hundred twenty days of a tenant asserting their rights under the MHLTA create a rebuttable presumption the eviction is retaliatory. RCW 59.20.075. Here, Defendant asked Plaintiff to comply with several of the landlord duties listed in RCW 59.20.130, including preventing the accumulation of stagnant water, and

[6] RCW 59.12 *et seq.*

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keeping common premises reasonably clean and sanitary. Four days after complaining about the sewage flow problem, Defendant was served with an eviction notice. Given the short time frame between assertion of tenant rights and the eviction action on the part of the landlord, the facts of this case mirror the classic case of a retaliatory eviction that requires dismissal.

4. Attorney's Fees

An award of reasonable attorney's fees to the prevailing party in any action under the MHLTA is mandatory. RCW 59.20.110. As noted above, the MHLTA governs evictions—such as this one—of park models and recreational vehicles used as primary residences from mobile home parks. Defendant is entitled to a reasonable attorney's fee award under RCW 59.20.110.

C. Conclusion

For the reasons above, the Unlawful Detainer should be dismissed with prejudice and Defendant should be awarded reasonable attorney's fees under RCW 59.20.110.

DATED this 20th Day of May, 2016.

Kent van Alstyne Washington State Bar #49928

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EXHIBIT B

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF PIERCE

CHARLES PARSONS and CAROL PARSONS, husband and wife,

Plaintiffs,

v.

JOHN PAUL MIERZ, and any additional tenants in possession of the premises located at 40014 Templin Road, Space 9, Roy, WA 98580,

Defendants.

No. 16-2-07585-7

STIPULATED MOTION AND ORDER TO VACATE ORDER FOR WRIT OF RESTITUTION

[Clerk's Action Required]

COMES NOW counsel for the plaintiffs and defendants herein and stipulate to vacate the Order for Writ of Restitution entered herein on May 24, 2016. The Order was entered in error as the Court denied the plaintiff's request for Writ of Restitution in this matter and after the show cause hearing on May 24, 2016, bound the matter over for trial.

AGREED to this 26 day of May, 2016

Shannon Jones

Shannon R. Jones, WSBA #28300
Attorney for Plaintiffs

AGREED to this _____ day of May, 2016

see facsimile attached

Kent van Alstyne, WSBA #49928
Attorney for Defendants

CAMPBELL, DILLE, BARNETT, & SMITH, P.L.L.C.
ATTORNEYS AT LAW
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5/27/2016 12265 0016

ORDER

THIS MATTER having come before the court on the motion of the Plaintiffs and based on the foregoing stipulation, and the court being in all things advised; it is hereby

ORDERED, ADJUDGED AND DECREED that the Order for Writ of Restitution entered in error on May 24, 2016 be and is hereby vacated.

DATED this 26 day of May, 2016.

JUDGE/COURT COMMISSIONER

Presented by:

FILED
IN COUNTY CLERK'S OFFICE

MAY 26 2016

PIERCE COUNTY, WASHINGTON
KEVIN STOCK, County Clerk
BY _____ DEPUTY

Shannon R. Jones, WSBA #28300
of Campbell, Dille, Barnett, & Smith
Attorneys for Plaintiffs

Approved as to Form and Notice of Presentment Waived:

See facsimile attached

Kent van Alstyne, WSBA #49928
Attorney for Defendants

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& SMITH, P.L.L.C.
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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF PIERCE

CHARLES PARSONS and CAROL PARSONS, husband and wife, Plaintiffs, v. JOHN PAUL MIERZ, and any additional tenants in possession of the premises located at 40014 Templin Road, Space 9, Roy, WA 98580, Defendants.	No. 16-2-07585-7 **STIPULATED MOTION AND ORDER TO VACATE ORDER FOR WRIT OF RESTITUTION**

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AGREED to this 26th day of May, 2016

Shannon R. Jones, WSBA #28300
Attorney for Plaintiffs

AGREED to this 26th day of May, 2016

Kent van Alstyne, WSBA #49928
Attorney for Defendants

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ORDER

THIS MATTER having come before the court on the motion of the Plaintiffs and based on the foregoing stipulation, and the court being in all things advised; it is hereby

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DATED this 26th day of May, 2016.

JUDGE/COURT COMMISSIONER

Presented by:

Shannon R. Jones, WSBA #28300
of Campbell, Dille, Barnett, & Smith
Attorneys for Plaintiffs

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Kent van Alstyne, WSBA #49928
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IN THE SUPERIOR COURT FOR THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF PIERCE

CHARLES PARSONS and CAROL PARSONS, husband and wife, Plaintiffs, v. JOHN PAUL MIERZ, and any additional tenants in possession of the premises located at 40014 Templin Road, Space 9, Roy, WA 98580, Defendants.	No. 16-2-07585-7 **DECLARATION OF SHANNON R. JONES PER GR 17(2) IN SUPPORT OF FILING STIPULATED MOTION AND ORDER**

I hereby declare under penalty of perjury under the laws of the State of Washington, as follows:

1. I am an attorney for the law firm of Campbell, Dille, Barnett, & Smith, PLLC, attorneys for Plaintiffs. The facsimile attached hereto was filed with the court by the undersigned.

2. I am familiar with the signature of Kent van Alstyne and certify that the signature appearing on the attached document is in fact his.

3. I have examined the document to which this affidavit is attached; have determined that said document consists of 3 pages including this affidavit page; and that it is complete and legible.

DATED this 26 day of May, 2016.

Shannon Jones

SHANNON R. JONES, WSBA #28300
of Campbell, Dille, Barnett, & Smith, PLLC
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EXHIBIT C

RCW 59.12.030

Unlawful detainer defined.

A tenant of real property for a term less than life is guilty of unlawful detainer either:

(1) When he or she holds over or continues in possession, in person or by subtenant, of the property or any part thereof after the expiration of the term for which it is let to him or her. When real property is leased for a specified term or period by express or implied contract, whether written or oral, the tenancy shall be terminated without notice at the expiration of the specified term or period;

(2) When he or she, having leased property for an indefinite time with monthly or other periodic rent reserved, continues in possession thereof, in person or by subtenant, after the end of any such month or period, when the landlord, more than twenty days prior to the end of such month or period, has served notice (in manner in RCW **59.12.040** provided) requiring him or her to quit the premises at the expiration of such month or period;

(3) When he or she continues in possession in person or by subtenant after a default in the payment of rent, and after notice in writing requiring in the alternative the payment of the rent or the surrender of the detained premises, served (in manner in RCW **59.12.040** provided) in behalf of the person entitled to the rent upon the person owing it, has remained uncomplied with for the period of three days after service thereof. The notice may be served at any time after the rent becomes due;

(4) When he or she continues in possession in person or by subtenant after a neglect or failure to keep or perform any other condition or covenant of the lease or agreement under which the property is held, including any covenant not to assign or sublet, than one for the payment of rent, and after notice in writing requiring in the alternative the performance of such condition or covenant or the surrender of the property, served (in manner in RCW **59.12.040** provided) upon him or her, and if there is a subtenant in actual possession of the premises, also upon such subtenant, shall remain uncomplied with for ten days after service thereof. Within ten days after the service of such notice the tenant, or any subtenant in actual occupation of the premises, or any mortgagee of the term, or other person interested in its continuance, may perform such condition or covenant and thereby save the lease from such forfeiture;

(5) When he or she commits or permits waste upon the demised premises, or when he or she sets up or carries on thereon any unlawful business, or when he or she erects, suffers, permits, or maintains on or about the premises any nuisance, and remains in possession after the service (in manner in RCW **59.12.040** provided) upon him or her of three days' notice to quit;

(6) A person who, without the permission of the owner and without having color of title thereto, enters upon land of another and who fails or refuses to remove therefrom after three days' notice, in writing and served upon him or her in the manner provided in RCW **59.12.040**. Such person may also be subject to the criminal provisions of chapter **9A.52** RCW; or

(7) When he or she commits or permits any gang-related activity at the premises as prohibited by RCW **59.18.130**.

[1998 c 276 § 6; 1983 c 264 § 1; 1953 c 106 § 1. Prior: **1905 c 86 § 1; 1891 c 96 § 3; 1890 p 73 § 3;** RRS § 812.]

NOTES:

*Termination of month to month tenancy: RCW **59.04.020, 59.18.200.***

*Unlawful detainer defined: RCW **59.16.010.***

RCW 59.12.170

Judgment—Execution.

If upon the trial the verdict of the jury or, if the case be tried without a jury, the finding of the court be in favor of the plaintiff and against the defendant, judgment shall be entered for the restitution of the premises; and if the proceeding be for unlawful detainer after neglect or failure to perform any condition or covenant of a lease or agreement under which the property is held, or after default in the payment of rent, the judgment shall also declare the forfeiture of the lease, agreement, or tenancy. The jury, or the court, if the proceedings be tried without a jury, shall also assess the damages occasioned to the plaintiff by any forcible entry, or by any forcible or unlawful detainer, alleged in the complaint and proved on the trial, and, if the alleged unlawful detainer be after default in the payment of rent, find the amount of any rent due, and the judgment shall be rendered against the defendant guilty of the forcible entry, forcible detainer, or unlawful detainer for twice the amount of damages thus assessed and of the rent, if any, found due. When the proceeding is for an unlawful detainer after default in the payment of rent, and the lease or agreement under which the rent is payable has not by its terms expired, execution upon the judgment shall not be issued until the expiration of five days after the entry of the judgment, within which time the tenant or any subtenant, or any mortgagee of the term, or other party interested in its continuance, may pay into court for the landlord the amount of the judgment and costs, and thereupon the judgment shall be satisfied and the tenant restored to his or her estate; but if payment, as herein provided, be not made within five days the judgment may be enforced for its full amount and for the possession of the premises. In all other cases the judgment may be enforced immediately. If writ of restitution shall have been executed prior to judgment no further writ or execution for the premises shall be required.

[**2010 c 8 § 19014; 1891 c 96 § 18;** RRS § 827. Prior: **1890 p 80 § 18.**]

RCW 59.18.030

Definitions.

As used in this chapter:

(1) "Certificate of inspection" means an unsworn statement, declaration, verification, or certificate made in accordance with the requirements of RCW **9A.72.085** by a qualified inspector that states that the landlord has not failed to fulfill any substantial obligation imposed under RCW **59.18.060** that endangers or impairs the health or safety of a tenant, including (a) structural members that are of insufficient size or strength to carry imposed loads with safety, (b) exposure of the occupants to the weather, (c) plumbing and sanitation defects that directly expose the occupants to the risk of illness or injury, (d) not providing facilities adequate to supply heat and water and hot water as reasonably required by the tenant, (e) providing heating or ventilation systems that are not functional or are hazardous, (f) defective, hazardous, or missing electrical wiring or electrical service, (g) defective or hazardous exits that increase the risk of injury to occupants, and (h) conditions that increase the risk of fire.

(2) "Commercially reasonable manner," with respect to a sale of a deceased tenant's personal property, means a sale where every aspect of the sale, including the method, manner, time, place, and other terms, must be commercially reasonable. If commercially reasonable, a landlord may sell the tenant's property by public or private proceedings, by one or more contracts, as a unit or in parcels, and at any time and place and on any terms.

(3) "Comprehensive reusable tenant screening report" means a tenant screening report prepared by a consumer reporting agency at the direction of and paid for by the prospective tenant and made available directly to a prospective landlord at no charge, which contains all of the following: (a) A consumer credit report prepared by a consumer reporting agency within the past thirty days; (b) the prospective tenant's criminal history; (c) the prospective tenant's eviction history; (d) an employment verification; and (e) the prospective tenant's address and rental history.

(4) "Criminal history" means a report containing or summarizing (a) the prospective tenant's criminal convictions and pending cases, the final disposition of which antedates the report by no more than seven years, and (b) the results of a sex offender registry and United States department of the treasury's office of foreign assets control search, all based on at least seven years of address history and alias information provided by the prospective tenant or available in the consumer credit report.

(5) "Designated person" means a person designated by the tenant under RCW **59.18.590**.

(6) "Distressed home" has the same meaning as in RCW **61.34.020**.

(7) "Distressed home conveyance" has the same meaning as in RCW **61.34.020**.

(8) "Distressed home purchaser" has the same meaning as in RCW **61.34.020**.

(9) "Dwelling unit" is a structure or that part of a structure which is used as a home, residence, or sleeping place by one person or by two or more persons maintaining a common household, including but not limited to single-family residences and units of multiplexes, apartment buildings, and mobile homes.

(10) "Eviction history" means a report containing or summarizing the contents of any records of unlawful detainer actions concerning the prospective tenant that are reportable in accordance with state law, are lawful for landlords to consider, and are obtained after a search based on at least seven years of address history and alias information provided by the prospective tenant or available in the consumer credit report.

(11) "Gang" means a group that: (a) Consists of three or more persons; (b) has identifiable leadership or an identifiable name, sign, or symbol; and (c) on an ongoing basis, regularly conspires and acts in concert mainly for criminal purposes.

(12) "Gang-related activity" means any activity that occurs within the gang or advances a gang purpose.

(13) "In danger of foreclosure" means any of the following:

(a) The homeowner has defaulted on the mortgage and, under the terms of the mortgage, the mortgagee has the right to accelerate full payment of the mortgage and repossess, sell, or cause to be sold the property;

(b) The homeowner is at least thirty days delinquent on any loan that is secured by the property; or

(c) The homeowner has a good faith belief that he or she is likely to default on the mortgage within the upcoming four months due to a lack of funds, and the homeowner has reported this belief to:

(i) The mortgagee;

(ii) A person licensed or required to be licensed under chapter **19.134** RCW;

(iii) A person licensed or required to be licensed under chapter **19.146** RCW;

(iv) A person licensed or required to be licensed under chapter **18.85** RCW;

(v) An attorney-at-law;

(vi) A mortgage counselor or other credit counselor licensed or certified by any federal, state, or local agency; or

(vii) Any other party to a distressed property conveyance.

(14) "Landlord" means the owner, lessor, or sublessor of the dwelling unit or the property of which it is a part, and in addition means any person designated as representative of the owner, lessor, or sublessor including, but not limited to, an agent, a resident manager, or a designated property manager.

(15) "Mortgage" is used in the general sense and includes all instruments, including deeds of trust, that are used to secure an obligation by an interest in real property.

(16) "Owner" means one or more persons, jointly or severally, in whom is vested:

(a) All or any part of the legal title to property; or

(b) All or part of the beneficial ownership, and a right to present use and enjoyment of the property.

(17) "Person" means an individual, group of individuals, corporation, government, or governmental agency, business trust, estate, trust, partnership, or association, two or more persons having a joint or common interest, or any other legal or commercial entity.

(18) "Premises" means a dwelling unit, appurtenances thereto, grounds, and facilities held out for the use of tenants generally and any other area or facility which is held out for use by the tenant.

(19) "Property" or "rental property" means all dwelling units on a contiguous quantity of land managed by the same landlord as a single, rental complex.

(20) "Prospective landlord" means a landlord or a person who advertises, solicits, offers, or otherwise holds a dwelling unit out as available for rent.

(21) "Prospective tenant" means a tenant or a person who has applied for residential housing that is governed under this chapter.

(22) "Qualified inspector" means a United States department of housing and urban development certified inspector; a Washington state licensed home inspector; an American society of home inspectors certified inspector; a private inspector certified by the national association of housing and redevelopment officials, the American association of code enforcement, or other comparable professional association as approved by the local municipality; a municipal code enforcement officer; a Washington licensed structural engineer; or a Washington licensed architect.

(23) "Reasonable attorneys' fees," where authorized in this chapter, means an amount to be determined including the following factors: The time and labor required, the novelty and difficulty of the questions involved, the skill requisite to perform the legal service properly, the fee customarily charged in the locality for similar legal services, the amount involved and the results obtained, and the experience, reputation and ability of the lawyer or lawyers performing the services.

(24) "Reasonable manner," with respect to disposing of a deceased tenant's personal property, means to dispose of the property by donation to a not-for-profit charitable organization, by removal of the property by a trash hauler or recycler, or by any other method that is reasonable under the circumstances.

(25) "Rental agreement" means all agreements which establish or modify the terms, conditions, rules, regulations, or any other provisions concerning the use and occupancy of a dwelling unit.

(26) A "single-family residence" is a structure maintained and used as a single dwelling unit. Notwithstanding that a dwelling unit shares one or more walls with another dwelling unit, it shall be deemed a single-family residence if it has direct access to a street and shares neither heating facilities nor hot water equipment, nor any other essential facility or service, with any other dwelling unit.

(27) A "tenant" is any person who is entitled to occupy a dwelling unit primarily for living or dwelling purposes under a rental agreement.

(28) "Tenant representative" means:

(a) A personal representative of a deceased tenant's estate if known to the landlord;

(b) If the landlord has no knowledge that a personal representative has been appointed for the deceased tenant's estate, a person claiming to be a successor of the deceased tenant who has provided the landlord with proof of death and an affidavit made by the person that meets the requirements of RCW **11.62.010**(2);

(c) In the absence of a personal representative under (a) of this subsection or a person claiming to be a successor under (b) of this subsection, a designated person; or

(d) In the absence of a personal representative under (a) of this subsection, a person claiming to be a successor under (b) of this subsection, or a designated person under (c) of this subsection, any person who provides the landlord with reasonable evidence that he or she is a successor of the deceased tenant as defined in RCW **11.62.005**. The landlord has no obligation to identify all of the deceased tenant's successors.

(29) "Tenant screening" means using a consumer report or other information about a prospective tenant in deciding whether to make or accept an offer for residential rental property to or from a prospective tenant.

(30) "Tenant screening report" means a consumer report as defined in RCW **19.182.010** and any other information collected by a tenant screening service.

[2016 c 66 § 1. Prior: **2015 c 264 § 1**; prior: **2012 c 41 § 2**; **2011 c 132 § 1**; prior: **2010 c 148 § 1**; **2008 c 278 § 12**; **1998 c 276 § 1**; **1973 1st ex.s. c 207 § 3.]**

NOTES:

Reviser's note: The definitions in this section have been alphabetized pursuant to RCW **1.08.015**(2)(k).

Finding—2012 c 41: See note following RCW **59.18.257**.

RCW 59.18.410

Forcible entry or detainer or unlawful detainer actions—Writ of restitution—Judgment—Execution.

If upon the trial the verdict of the jury or, if the case be tried without a jury, the finding of the court be in favor of the plaintiff and against the defendant, judgment shall be entered for the restitution of the premises; and if the proceeding be for unlawful detainer after neglect or failure to perform any condition or covenant of a lease or agreement under which the property is held, or after default in the payment of rent, the judgment shall also declare the forfeiture of the lease, agreement, or tenancy. The jury, or the court, if the proceedings be tried without a jury, shall also assess the damages arising out of the tenancy occasioned to the plaintiff by any forcible entry, or by any forcible or unlawful detainer, alleged in the complaint and proved on the trial, and, if the alleged unlawful detainer be after default in the payment of rent, find the amount of any rent due, and the judgment shall be rendered against the defendant guilty of the forcible entry, forcible detainer, or unlawful detainer for the amount of damages thus assessed and for the rent, if any, found due, and the court may award statutory costs and reasonable attorney's fees. When the proceeding is for an unlawful detainer after default in the payment of rent, and the lease or agreement under which the rent is payable has not by its terms expired, execution upon the judgment shall not be issued until the expiration of five days after the entry of the judgment, within which time the tenant or any subtenant, or any mortgagee of the term, or other party interested in the continuance of the tenancy, may pay into court for the landlord the amount of the judgment and costs, and thereupon the judgment shall be satisfied and the tenant restored to his or her tenancy; but if payment, as herein provided, be not made within five days the judgment may be enforced for its full amount and for the possession of the premises. In all other cases the judgment may be enforced immediately. If writ of restitution shall have been executed prior to judgment no further writ or execution for the premises shall be required. This section also applies if the writ of restitution is issued pursuant to a final judgment entered after a show cause hearing conducted in accordance with RCW **59.18.380**.

[2011 c 132 § 20; 2010 c 8 § 19033; 1973 1st ex.s. c 207 § 42.]

COURT OF APPEALS OF WASHINGTON DIVISION II

CHARLES and CAROL PARSONS Plaintiffs, v. JOHN PAUL MIERZ Defendant.	)	No. 49324-1-II AFFIDAVIT OF SERVICE BRIEF OF APPELLANT

The undersigned hereby declares under the penalty of perjury of the laws of the State of Washington the following is true and correct: I am a resident of the State of Washington, over the age of eighteen years, and not a party to or have an interest in the above-entitled action. The undersigned further declares that:

On FEBRUARY 21, 2017 at 10:45 ~~am~~/pm, I caused one (1) true and correct copy of the above-entitled documents to be served upon SHANNON JONES, attorney for plaintiff's, by then and there leaving the same with Carlene Klein Receptionist for Campbell, Dille, Barnett and Smith, PLLC.

Dated this 21st Day of February, 2017.

Robert Rose
Process Server #15-0917-10